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Colorado General Assembly

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MEMORANDUM

TO: Kathleen Curry and Bill Hobbs
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: October 31, 2017
SUBJECT: Proposed initiative measure 2017-2018 #69, concerning congressional redistricting

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of the Colorado Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

Purposes

The major purposes of the proposed amendment to the Colorado Revised Statutes appear to be:

1. To stop political gerrymandering;
2. To establish an independent congressional redistricting commission (the Commission) to redraw the boundaries of congressional districts;

3. To specify the criteria that the Commission and its staff is to use in redrawing the congressional districts;
4. To establish the number of members of the Commission, their qualifications, and their method of appointment;
5. To authorize the Commission to adopt rules;
6. To specify that the Commission is subject to the "Colorado Open Records Act"; except that maps not submitted to the Commission are not public records, but that work product and communications between staff are public records once a plan is submitted to the Colorado Supreme Court;
7. To provide that the Commission is subject to the open meetings provisions of part 4 of article 6 of title 24, C.R.S.;
8. To prohibit:
 - a. Communications concerning Commission business outside of a public meeting involving three or more Commissioners;
 - b. Communications between Commissioners and the Commission staff concerning plans unless during a public meeting; and
 - c. Communications by Commission staff concerning any plan outside of a public meeting except with other staff members;
9. To require:
 - a. Any person who receives compensation for advocating to the Commission or its members to be deemed a professional lobbyist and subject to laws relating to professional lobbyists; and
 - b. At least eight affirmative votes from Commissioners for the adoption of any motion of the Commission;
10. To require staff to publish a preliminary plan within 30 days after the Commission is convened;
11. To conduct public hearings throughout the state, but authorizing remote hearings technology to be utilized for certain hearings;
12. After the public hearings, to require staff to prepare and present at least three plans to the Commission;

13. To require the Commission to finalize and submit its plan to the Colorado Supreme Court by a date specified; except that, if the Commission is unable to approve a plan by that date, staff is to submit its third plan to the district court;
14. To authorize the district court to make changes to the plan only if they improve compliance with the criteria established in the measure, to approve a plan, and to submit the plan to the Colorado Supreme Court;
15. To provide that the Colorado Supreme Court reviews the final plan for compliance with the criteria in the measure and may return a plan to the Commission for changes; and
16. If the Commission is unable to adopt a new plan, to direct the staff to submit a plan that complies with the Colorado Supreme Court's directives.

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

1. Article V, section 1 (5.5) of the Colorado Constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. The previous section 2-1-101, C.R.S., which was repealed in 2017, described the congressional districts as established by the general assembly. It is the practice of the Office of Legislative Legal Services in drafting bills for the general assembly not to enact new law by recreating and reenacting previously repealed material unless the subject matter of the new material is similar to the subject matter of the former material. This is for historical purposes, so that citizens can track repealed sections of law. Do the proponents believe that, for historical purposes, it would be better to place the new proposed section 2-1-101 in a different location in article 1 of title 2, C.R.S.?
3. Do the proponents believe that the general assembly's constitutional duty to divide the state into congressional districts can be delegated to an independent commission through a statutory initiative?
4. Section 2-1-103 (3)(c) provides that independent members of the Commission cannot be affiliated with one of the two major political parties "[f]or a continuous period beginning with the date of the general election immediately prior to the most recent general election and through the date of the member's appointment." For the Commission appointed in 2021, does this mean that the time period commences on November 6, 2018, or some other date?

5. Is it the proponents' intent that not purposefully advantaging or disadvantaging a political party is of a higher priority than the factors listed in section 2-1-102 (1)(b), C.R.S.?
6. Could two or more of the independent members of the Commission be from the same minor political party? If so, would that impact the independent balance of the Commission?
7. Is it the intent of the proponents that a member of the Commission can never have been a candidate for congress? Is it the intent of the proponents that if a person serves on the Commission, the person is barred from being a candidate for congress in the future?
8. The State Administrative Procedures Act, article 4 of title 24, C.R.S., establishes procedures that a commission must follow when adopting rules. Is it the proponents' intent that the Commission comply with that act when adopting its rules?
9. If this measure passes and proposed initiative 2017-2018 #67 or #68 also passes, could the same staff be assigned to both commissions?
10. The measure provides that "Work product and communications between commission staff are subject to disclosure once a plan is submitted to the Supreme Court." Do the proponents intend that all work product and communications of the staff are subject to disclosure once the plan is submitted or only work product and communications related to the final plan?
11. Under the measure, would a professional journalist writing an editorial urging the Commission to adopt a certain plan or provision be considered a professional lobbyist?
12. In section 2-1-104 (5)(c), C.R.S., who is the appointing authority for the independent Commissioners?
13. Previous commissions have divided the state into regions and held public hearings on each region before looking at preliminary plans for each region. Do the proponents anticipate that there will be similar hearings before the staff prepares its initial preliminary plan?
14. Is it the proponents' intent that staff will prepare and publish the preliminary plan without input from the Commission or the public or does staff prepare an initial preliminary plan that is submitted to the Commission and is subject to a hearing at which Commissioners and the public may suggest changes to that

- initial plan, and that based on suggested changes staff then prepares a final preliminary plan that is published and the subject of the public hearings?
15. If the Commission votes to amend a staff plan, is staff required to include that amendment in its next plan?
 16. If the Commission considers an amendment to a staff plan but does not affirmatively vote to adopt the amendment, may staff include the amendment in its next plan?
 17. When a Commissioner or group of Commissioners request staff to prepare a new plan or an amendment to a plan at a public meeting, do the proponents anticipate that such a plan or amendment may be in an electronic format or just a description of the plan or changes requested?
 18. In order to avoid sliver precincts—that is, precincts that must be created because lines for congressional and state legislative districts are close but do not match—staff for previous commissions have altered commission plans based on the final congressional redistricting plan. If this initiative is adopted and either proposed initiative 2017-2018 #67 or #68 is adopted, may staff for both commissions communicate with one another about plans to avoid sliver precincts?
 19. The proposed section 2-1-105 (8), C.R.S., provides that, if the Commission is unable to adopt a plan, staff is to submit its third plan to the district court. Is there a specific district court or may staff choose which district court to which it may submit its plan?
 20. Under section 1-40-105.5, C.R.S., the director of research of the Colorado Legislative Council is required to prepare an initial fiscal impact statement, which includes an abstract that appears on petition sections, for each initiative that is submitted to the Title Board. In preparing the statement, the director is required to consider any fiscal impact estimate prepared by the proponents.
 - a. Will you submit the initiative to the Title Board? If so, when do you intend to do so?
 - b. Are you submitting a fiscal impact estimate today? If not, do you plan to submit an estimate in the future, and if so, when do you intend to do so?
 - c. To ensure that there is time for consideration, you are strongly encouraged to submit your estimate, if any, at least 12 days before the measure is scheduled for a Title Board hearing. The estimate should be

submitted to the Colorado Legislative Council staff at
BallotImpactEstimates.ga@state.co.us.

Technical Comments

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as suggested below.

1. In section 2-1-102 (1)(b)(III), the semi-colon should be changed to a period and the "and" should be shown in strike type "~~and~~" because subsection (1)(b)(IV) of that section is being repealed.